

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 646

Introduced by Assembly Member Swanson

(~~Coauthor: Assembly Member Chesbro~~ Coauthors: Assembly Members Beall, Buchanan, Chesbro, Coto, De Leon, Fong, Fuentes, Hall, Jeffries, Lieu, Bonnie Lowenthal, Ma, Mendoza, Nava, Portantino, Price, Ruskin, Salas, Skinner, and Torres)
(Coauthors: Senators DeSaulnier and Wiggins)

February 25, 2009

An act to amend Section 2401 of, and to repeal Section 2401.1 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 646, as amended, Swanson. Physicians and surgeons: employment.

Existing law, the Medical Practice Act, restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions, *and makes it a crime to practice medicine without a license*. Existing law establishes until January 1, 2011, a pilot project to allow qualified district hospitals that, among other things, provide more than 50 percent of patient days to the care of Medicare, Medi-Cal, and uninsured patients, to employ a physician and surgeon, if the hospital does not interfere with, control, or otherwise direct the professional judgment of the physician and surgeon. The pilot project authorizes the direct employment of a total of 20 physicians and surgeons by those hospitals to provide medically necessary services in rural and medically underserved communities,

and specifies that each qualified district hospital may employ up to 2 physicians and surgeons, subject to specified requirements.

This bill would delete the pilot project, and would instead authorize a health care district, as defined, ~~that is located in a rural area~~, or a public or *an independent community* nonprofit hospital or clinic located in a ~~health care district serving medically underserved urban populations and communities area, as specified~~, to employ physicians and surgeons if specified requirements are met and the district, hospital, or clinic does not interfere with, control, or otherwise direct the professional judgment of a physician and surgeon.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2401 of the Business and Professions
2 Code is amended to read:

3 2401. (a) Notwithstanding Section 2400, a clinic operated
4 primarily for the purpose of medical education by a public or
5 private nonprofit university medical school, which is approved by
6 the Division of Licensing or the Osteopathic Medical Board of
7 California, may charge for professional services rendered to
8 teaching patients by licensees who hold academic appointments
9 on the faculty of the university, if the charges are approved by the
10 physician and surgeon in whose name the charges are made.

11 (b) Notwithstanding Section 2400, a clinic operated under
12 subdivision (p) of Section 1206 of the Health and Safety Code
13 may employ licensees and charge for professional services rendered
14 by those licensees. However, the clinic shall not interfere with,
15 control, or otherwise direct the professional judgment of a
16 physician and surgeon in a manner prohibited by Section 2400 or
17 any other provision of law.

18 (c) Notwithstanding Section 2400, a narcotic treatment program
19 operated under Section 11876 of the Health and Safety Code and
20 regulated by the State Department of Alcohol and Drug Programs,
21 may employ licensees and charge for professional services rendered
22 by those licensees. However, the narcotic treatment program shall
23 not interfere with, control, or otherwise direct the professional
24 judgment of a physician and surgeon in a manner prohibited by
25 Section 2400 or any other provision of law.

(d) Notwithstanding Section 2400, a health care district ~~in a rural area~~ that is operated pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code may employ physicians and surgeons, and may charge for professional services rendered by a physician and surgeon, if the physician and surgeon in whose name the charges are made approves the charges. However, the district shall not interfere with, control, or otherwise direct a physician and surgeon's professional judgment in a manner prohibited by Section 2400 or any other provision of law.

(e) Notwithstanding Section 2400, a public or *an independent community nonprofit hospital or clinic located in a health care district serving medically underserved urban populations and communities, pursuant to Division 23 (commencing with Section 32000) of the Health and medically underserved area, as generally described in Part 5 of Chapter 1 of Title 42 of the Code of Federal Regulations, or an area where unmet priority needs for physicians and surgeons exist, as determined by the California Healthcare Workforce Policy Commission pursuant to Section 128225 of the Health and Safety Code, with a patient census that consists of more than 50 percent medically underserved populations, as defined in Section 127928 of the Health and Safety Code*, may employ physicians and surgeons, and may charge for professional services rendered by a physician and surgeon, if the physician and surgeon in whose name the charges are made approves the charges. ~~However, the hospital or clinic shall not interfere with, control, or otherwise direct a physician and surgeon's professional judgment in a manner prohibited by Section 2400 or any other provision of law.~~

(f) *The hospitals or clinics authorized to employ physicians and surgeons pursuant to subdivision (e) shall not interfere with, control, or otherwise direct a physician and surgeon's professional judgment in a manner prohibited by Section 2400 or any other provision of law. Violation of this prohibition is punishable as a violation of Section 2052, by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment. This subdivision is declaratory of existing law, and, as such, does not create a new crime or expand the scope of any existing crime.*

- 1 SEC. 2. Section 2401.1 of the Business and Professions Code
- 2 is repealed.

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